No. 14324

United States
Court of Appeals
for the Ninth Circuit

DeANGELIS COAL COMPANY, a Co-Partnership; AMERICAN LIGNITE PRODUCTS CO., a Co-Partnership; NAZZARENO DeANGELIS, VINCENZO DeANGELIS, MARY DeANGELIS, JOSEPH DeANGELIS, FRANK DeANGELIS, Individually and as Co-Partners, Doing Business Under the Name of AMERICAN LIGNITE PRODUCTS CO.,

Appellants,

vs.

THE SHARPLES CORPORATION,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Northern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—12-31-54

No. 14324

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

WALTER K. OLDS,
57 Post Street,
San Francisco, Calif.,

Attorney for the Plaintiff and Respondent.

PIERCE DEASY,
10 Court Street,
Jackson, California,

Attorney for the Defendants and Appellants.

In the United States District Court for the Northern District of California, Northern Division

No. 6731

THE SHARPLES CORPORATION, a Corporation,

Plaintiff,

vs.

DeANGELIS COAL COMPANY, a Copartnership; AMERICAN LIGNITE PRODUCTS CO., a Copartnership; NAZZARENO DeANGELIS, VINCENZO DeANGELIS, MARY DeANGELIS, JOSEPH DeANGELIS, FRANK DeANGELIS, Individually and as Copartners Doing Business Under the Fictitious Name and Style of DeANGELIS COAL COMPANY and Under the Name of AMERICAN LIGNITE PRODUCTS CO.; JOHN DOE COMPANY, a Corporation; RICHARD ROE COMPANY, a Corporation; FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, Individually and as Copartners Doing Business Under the Fictitious Name and Style of FIRST DOE COMPANY,

Defendants.

COMPLAINT—GOODS SOLD AND DELIVERED

Now comes the plaintiff above named and complains of the defendants above named, and for a first cause of action alleges as follows, to wit:

I.

That the plaintiff herein is a corporation incorporated under the laws of the State of Delaware. That the defendant herein, Nazzareno DeAngelis, is a citizen of the State of California, and the defendants herein, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis and Frank DeAngelis, are citizens of the State of Pennsylvania. That the amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

II.

That the true names of the defendants sued herein as John Doe Company, a corporation; Richard Roe Company, a corporation; First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, individually and as copartners doing business under the fictitious name and style of First Doe Company, are unknown to plaintiff, and said plaintiff asks leave to insert herein the true names of the said defendants in the place and stead of said fictitious names when the same become known to him, together with appropriate words to charge said defendants.

III.

That at all times herein mentioned, the defendants, Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis and Frank DeAngelis, and each of them, are copartners doing business under the fictitious name and style of DeAngelis Coal Company, and under the fictitious name and style of American Lignite Products Co.,

and the said defendants have and maintain a place of business in the City of Ione, County of Amador, State of California.

IV.

That within two years last past and next preceding the commencement of the above-entitled action, the said defendants herein, and each of them, purchased from the plaintiff herein, two machines known as Sharples Super-D-Canter Centrifuges. That the said defendants agreed to pay for each of said machines the sum of $13,545.00. That thereafter the said defendants did offer to return to the plaintiff herein one of said machines, and the said plaintiff did agree to accept the return of said machine upon payment by the said defendants herein of the sum of $3,386.25. That on or about the 22nd day of February, 1952, the said defendants herein returned to plaintiff the said machine, but ever since have failed and refused to pay the said plaintiff the sum of $3,386.25 aforementioned.

V.

That the said plaintiff has made demand upon the said defendants for the payment of said sum, but the same has never been paid, and the whole amount thereof is due, owing, and unpaid from the said defendants herein.

And for a Second, Separate and Distinct Cause of Action Against the Said Defendants, Plaintiff Complains and Alleges as Follows, to Wit:

I.

That plaintiff incorporates herein Paragraphs I, II, and III of the first cause of action hereinbefore set forth for all intents and purposes as fully as if set forth in haec verba herein.

II.

That within two years last past and next preceding the commencement of the above-entitled action, the said defendants herein, and each of them, became indebted to plaintiff for the sum of $3,386.25, as and for goods, wares and merchandise sold and delivered to the said defendants herein.

Wherefore, plaintiff prays judgment against the defendants herein, and each of them, in the sum of $3,386.25, together with interest thereon from the 22nd day of February, 1952, for plaintiff's costs of suit incurred herein, and for such other and further relief as is meet and proper in the premises.

/s/ WALTER K. OLDS,
Attorney for Plaintiff.

[Endorsed]: Filed September 20, 1952.

[Title of District Court and Cause.]

ANSWER AND COUNTER CLAIM

Now come the defendants DeAngelis Coal Company, a copartnership; American Lignite Products Co., a copartnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, individually and as copart-

ners doing business under the name of American Lignite Products Co., and, answering for themselves alone, admit, deny and allege as follows:

I.

Answering unto paragraph I, these answering defendants deny that defendants Vincenzo DeAngelis, Mary DeAngelis and Frank DeAngelis are citizens of the State of Pennsylvania but, on the contrary allege that the said named persons are citizens of the State of California.

II.

Answering unto paragraph IV of said complaint, these answering defendants admit the first and second sentences of said allegation down to and including the numerals $13,545.00 in line 30 therein. Defendants in further answer to said paragraph admit that on or about the 22nd day of February, 1952, they notified plaintiff that they, said defendants, did not and could not use said Centrifuge because of the said centrifuge not responding to the warranty of suitability for the purpose for which the machine was sold by plaintiff to defendants and for the use to which defendants were to put said centrifuge, all well known to plaintiff. That thereupon defendants did return said centrifuge to plaintiff and that on or about the 12th day of April, 1952, said plaintiff did acknowledge receipt of said centrifuge from said defendants and thereupon informed defendants that the plaintiff did issue credit to said defendants upon their account; that plaintiffs did demand of defendants in consideration of

the return of said machine the sum of $3,386.25 but that defendants refused to pay said sum or any other or different sum or any sum at all to plaintiffs in furtherance thereof and defendants did not at any of the times herein stated, or at any time, or at all, agree to pay to plaintiffs in consideration of the return of said machine the sum of $3,386.25 or any other, different, or any sum whatsoever.

III.

Answering unto paragraph V of said complaint, it is admitted that plaintiff did make demand upon defendants for the payment of said sum and that the same has never been paid but these defendants deny that the whole thereof or any part thereof or anything is due, owing and unpaid from these said defendants.

Answering Unto the Second Separate and Distinct Cause of Action, These Answering Defendants Admit, Deny and Affirm as Follows:

I.

Answering unto paragraph I of said Second Cause of Action, the defendants incorporate herein for reference, as fully as though set forth in haec verba their answer to paragraphs I, II and III of the First Cause of Action.

II.

Answering unto paragraph II of said Second Cause of Action, these answering defendants deny each and every, all and singular, the allegations therein contained.

As and for a First Affirmative Defense and Counter Claim to Said Causes of Action, These Answering Defendants Allege:

I.

That within two years last past defendants purchased from plaintiff two Model Py 14, Cylindrical Super-D-Canters and each of them was purchased based upon the said D-Canters meeting a performance result conforming to preliminary and pilot model which was conducted by plaintiff in accordance with samples and specifications for performance furnished by defendants to plaintiff; that thereupon and during the month of December, 1951, the said D-Canters were delivered to defendants by plaintiff and defendants placed one D-Canter in operation at their plant at Ione in the County of Amador, State of California; that both of said D-Canters were identical in specification; that repeated and continuing tests undertaken by defendants upon the said D-Canter placed in operation produced results not in conformity with the specification to be met by plaintiff in the operation of said D-Canters and said D-Canters and each of them was and is entirely unsuited for the work proposed to be performed by them by defendants of which plaintiff was well aware; that in furtherance of the inability of said D-Canters, or either of them, to perform according to the agreement of plaintiff and defendants, defendants thereupon and on or about the 22nd day of February, 1952, and in writing to plaintiff, rescinded their contract to

purchase said second D-Canter from plaintiff; and that thereupon and on or about the 20th day of March, 1952, defendants returned the said one D-Canter to plaintiff at its head office in Philadelphia, Pa., and thereafter and on or about the 12th day of April, 1952, plaintiff acknowledged receipt of said D-Canter; that plaintiff has since retained said D-Canter to its sole benefit. That in furtherance thereof, these defendants returned said D-Canter to said plaintiffs, freight prepaid, and they were required to and did expend as and for freight charges upon return of said D-Canter the sum of $107.44.

As and for a Second, Separate, Affirmative Defense Thereto, Answering Defendants Allege:

That the complaint of plaintiff fails to allege a cause of action against these answering defendants or either or any of them.

Wherefore, answering defendants pray that plaintiff take nothing in consequence of his said complaint and that defendants have judgment for the sum of $170.44 together with their costs of suit incurred herein and for such other and further relief as is meet and proper in the premises.

Dated this 15th day of October, 1952.

/s/ PIERCE DEASY,
Attorney for Answering
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 17, 1952.

[Title of District Court and Cause.]

REPLY TO COUNTER CLAIM

Now comes the plaintiff, The Sharples Corporation, and for reply to the counter claim denies, generally and specifically, each and every, all and singular, the allegations of said counter claim except that plaintiff admits that within two years last past defendants purchased from plaintiff two Model Py 14, Cylindrical Super-D-Canters; that during the month of December, 1951, the said D-Canters were delivered to defendants by plaintiff and defendants placed said one D-Canter in operation at their plant at Ione, in the County of Amador, State of California; that both of said D-Canters were identical; that defendants returned said one D-Canter to plaintiff at its head office in Philadelphia, Pennsylvania, and that plaintiff thereafter retained said D-Canter.

Wherefore, plaintiff prays defendants take nothing by said counter claim, and for such other and further relief as may be meet and proper in the premises.

Dated: April 30, 1953.

/s/ WALTER K. OLDS,
Attorney for Plaintiff.

[Endorsed]: Filed April 30, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action coming on regularly to be tried before the above-entitled court on the 30th day of April, 1953, the plaintiff, The Sharples Corporation, a corporation, appearing by its attorney, Walter K. Olds, Esq., and the defendants herein, DeAngelis Coal Company, a copartnership; American Lignite Products Co., a copartnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, individually and as copartners doing business under the name of American Lignite Products Co., appearing through their attorney, Pierce Deasy, Esq., the Honorable Dal M. Lemmon, Judge of said court presiding, and thereafter witnesses being called and sworn, and evidence, both oral and documentary, being introduced, and the said matter being thereafter submitted to the court for decision, the said court being fully advised; now, therefore, the said court makes the following findings of fact and conclusions of law, to wit:

Findings of Fact

I.

That it is true that the plaintiff herein, The Sharples Corporation, a corporation, is a corporation incorporated under the laws of the State of Delaware. That it is true that the defendants herein,

Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, and Frank DeAngelis are citizens of the State of California, and that the defendant Joseph DeAngelis is a citizen of the State of Pennsylvania. That it is true that the amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

II.

That it is true that the defendants herein, Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis and Frank DeAngelis, and each of them, are copartners doing business under the fictitious name and style of DeAngelis Coal Company, and under the fictitious name and style of American Lignite Products Co., and the said defendants have and maintain a place of business in the City of Ione, County of Amador, State of California.

III.

That it is true that within two years last past and next preceding the commencement of the above-entitled action, the said defendants herein, and each of them, purchased from the plaintiff herein, two machines known as Sharples Super-D-Canter Centrifuges. That the said defendants agreed to pay for each of said machines the sum of $13,545.00. That thereafter the said defendants did offer to return to the plaintiff herein one of said machines, and the said plaintiff did agree to accept the return of said machine upon payment by the said defendants herein of the sum of $3,386.25. That on or about the 22nd day of February, 1952, the said de-

fendants herein returned to plaintiff the said machine, and agreed to pay said sum of $3,386.25 to said plaintiff. That it is true that ever since the said 22nd day of February, 1952, the said defendants have failed and refused to pay to the said plaintiff the said sum of $3,386.25.

IV.

That it is true that the said plaintiff has made demand upon the said defendants for the payment of said sum, but the same has never been paid, and the whole amount thereof is due, owing, and unpaid from the said defendants herein.

V.

That it is true that on or about the 22nd day of February, 1952, the said defendants did offer to return said machine to the plaintiff herein, and that the said defendants did return the aforesaid machine thereafter to the said plaintiff herein, and that the said plaintiff did acknowledge receipt of the same from the defendants herein. That it is true that the said machine was accepted and received solely and only upon the condition, agreement, and understanding of the defendants herein that the defendants would pay to the said plaintiff herein the sum of $3,386.25 aforementioned and no other. That the said defendants did so return said machine, and the said plaintiff did so accept said machine solely and only upon the aforesaid agreement, contract, and understanding that the said

defendants would pay the said sum to the said plaintiff herein.

VI.

That it is not true that there was any warranty of suitability for the purpose for which the said machines were sold by the plaintiff to the defendants, or that the use to which the said defendants were to put said machines were well known to plaintiff, and in that respect the said defendants did buy and purchase the aforesaid machines solely and only upon their own examination and inspection and exercise of judgment, and that the said defendants herein did not rely upon any warranty or representation of the said plaintiff herein in connection with the sale of the said machines aforementioned, but the said defendants herein did make a full and complete investigation, inspection, and test of the said machines before purchasing the same.

VII.

That it is not true that within two years last past the purchase of the said machines aforementioned was based upon the said machines meeting a performance result conforming to preliminary and pilot models which was conducted by the plaintiff in accordance with samples and specifications for performance furnished by the defendants to the plaintiff, and in that respect the said defendants acted solely upon their own volition, inspection, and investigation in purchasing the said machines, and that the said tests made with preliminary and pilot models made by the said plaintiff herein were ac-

cepted by the said defendants herein solely in connection with the exercise of their own judgment in regard thereto, and that the machines delivered did in all respects conform to and perform according to the result and tests achieved in connection with the preliminary and pilot models.

VIII.

That it is not true that repeated and continued tests or any tests undertaken by the said defendants upon one of the said machines when placed in operation produced results not in conformity with the specifications to be met in the operation of said machine and that said machines did perform in conformity with the specifications to be met by the said plaintiff in connection with the said machines. That it is not true that the said machines, and each of them, were unsuited for the work proposed to be performed by them by defendants, of which plaintiff was well aware. That it is true that the said defendants returned the said machine to the plaintiff herein, and that the plaintiff acknowledged receipt of the same, but that the said machine was accepted by the said plaintiff and retained for the benefit of the plaintiff solely and only in accordance with the agreement and understanding that the said defendants herein would pay to the said plaintiff herein the sum of $3,386.25. That it is true that the defendants herein expended freight charges upon the return of said machine, but the said freight charges so expended were solely for the benefit of

the said defendants herein and the said plaintiff never agreed to pay or assume the same.

And From the Foregoing Findings of Fact, Said Court Makes the Following:

Conclusions of Law

I.

That at all times herein mentioned, the defendants, Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis and Frank DeAngelis, and each of them, are copartners doing business under the fictitious name and style of DeAngelis Coal Company, and under the fictitious name and style of American Lignite Products Co., and the said defendants have and maintain a place of business in the City of Ione, County of Amador, State of California.

II.

That the said defendants herein did agree to pay to and became indebted to the said plaintiff herein for the sum of $3,386.25 as of the 22nd day of February, 1952.

III.

That the said plaintiff has made demand upon the defendants for the payment of said sum, but the same has never been paid, and the whole amount thereof is due, owing, and unpaid from the said defendants herein.

IV.

That the said plaintiff is entitled to have judgment upon its complaint in favor of the said plain-

tiff herein against the defendants herein in the sum of $3,386.25, together with interest thereon at the legal rate of 7% from the 22nd day of February, 1952.

V.

That the said defendants herein are entitled to nothing by way of counterclaim herein.

Let judgment be entered accordingly.

Dated: January 12, 1954.

/s/ DAL M. LEMMON,
Judge of the District Court.

Lodged January 1, 1954.

[Endorsed]: Filed January 12, 1954.

In the United States District Court for the Northern District of California, Northern Division

No. 6731

THE SHARPLES CORPORATION, a Corporation,

Plaintiff,

vs.

DeANGELIS COAL COMPANY, a Copartnership; AMERICAN LIGNITE PRODUCTS CO., a Copartnership; NAZZARENO DeANGELIS, VINCENZO DeANGELIS, MARY DeANGELIS, JOSEPH DeANGELIS, FRANK DeANGELIS, Individually and as Copartners Doing Business Under the Fictitious Name and Style of DeANGELIS COAL COMPANY and Under the Name of AMERICAN LIGNITE PRODUCTS CO., JOHN DOE COMPANY, a Corporation; RICHARD ROE COMPANY, a Corporation; FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, Individually and as Copartners Doing Business Under the Fictitious Name and Style of FIRST DOE COMPANY,

Defendants.

JUDGMENT

The above-entitled action coming on regularly to be tried before the above-entitled court on the 30th day of April, 1953, the plaintiff, The Sharples Corporation, a corporation, appearing by its attorney,

Walter K. Olds, Esq., and the defendants herein, DeAngelis Coal Company, a copartnership; American Lignite Products Co., a copartnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, individually and as copartners doing business under the name of American Lignite Products Co., appearing through their attorney, Pierce Deasy, Esq., the Honorable Dal M. Lemmon, Judge of said court presiding, and thereafter witnesses being called and sworn, and evidence, both oral and documentary, being introduced, and the said matter being thereafter submitted to the court for decision, the said court being fully advised, and the court having heretofore made and entered herein its Findings of Fact and Conclusions of Law, now, therefore:

It Is Hereby Ordered, Adjudged and Decreed that the said plaintiff, The Sharples Corporation, a corporation, have and recover of the defendants, DeAngelis Coal Company, a copartnership; American Lignite Products Co., a copartnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, individually and as copartners doing business under the name of American Lignite Products Co., the sum of $3,386.25 principal, $439.81 interest, together with plaintiff's costs in the sum of $.....

It Is Further Ordered that the said defendants herein take nothing by way of counterclaim or offset against the said plaintiff herein.

Dated: January 12, 1954.

/s/ DAL M. LEMMON,
Judge of the District Court.

Lodged January 1, 1954.

[Endorsed]: Filed January 12, 1954.

Entered January 14, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73 (b)

Notice is hereby given that defendants DeAngelis Coal Company, a copartnership; American Lignite Products Co., a copartnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, individually and as copartners doing business under the name of American Lignite Products Co., hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in this action on January 14, 1954.

/s/ PIERCE DEASY,
Attorney for Appealing Defendants.

Dated this 11th day of February, 1954.

[Endorsed]: Filed February 13, 1954.

[Title of District Court and Cause.]

POINTS UPON WHICH APPELLANTS INTEND TO RELY UPON APPEAL

The following are the points upon which the appellants intend to rely upon this appeal:

1. That plaintiff's complaint was fatally defective in not having pleaded, nor furnished proof thereof, of damages resulting from the failure of defendants to accept and pay for the goods sold from plaintiff to defendants; and

2. That the correct measure of damages is the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted.

Dated this 29th day of March, 1954.

/s/ PIERCE DEASY,
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 31, 1954.

In the District Court of the United States for the Northern District of California, Northern Division

No. 6731

THE SHARPLES CORPORATION, a Corporation,

Plaintiff,

vs.

DeANGELIS COAL CO., a Copartnership; AMERICAN LIGNITE PRODUCTS CO., a Copartnership; NAZZARENO DeANGELIS, VINCENZO DeANGELIS, MARY DeANGELIS, Doing Business as AMERICAN LIGNITE PRODUCTS CO., et al.,

Defendants.

Thursday, April 30, 1953

Wednesday, November 24, 1953

REPORTER'S TRANSCRIPT

Appearances:

For the Plaintiff:

WALTER K. OLDS, ESQ.

For the Defendants:

PIERCE DEASY, ESQ.

* * *

Mr. Olds: If your Honor please, it is my belief that the first count does state a cause of action in Paragraph 4, wherein it is alleged that the Defendants did offer to return to the Plaintiff herein one of said machines, and said Plaintiff did agree to accept the return of said machine upon payment by the said Defendants herein of the sum of three thousand and some odd dollars, that that states a contract, a modification of the original contract of purchase, and that is a supplemental, secondary contract that came into being.

The Court: Well, there is no allegation of any promise by the Defendants to pay the sum of $3,386.00.

Mr. Olds: If that be considered to be a defect, is there any reason why I may not ask your Honor to permit to amend to include in the allegation——

The Court: You can ask to amend anything, of course.

Mr. Olds: Well, it seems to me it is a reasonable request to be granted.

The Court: Well, I think so.

Mr. Olds: May it be considered that in paragraph 4, we have alleged that they agreed to pay that amount, namely, $3,386.25?

The Court: We are very liberal in permitting amendments to the pleadings in this Court in furtherance of justice, and I will permit you to amend to allege that the defendants agreed to pay the sum of $3,386.25 upon—— [5*]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Olds: Thank you, your Honor.

The Court: Return of the machine.

Mr. Olds: I did feel, too, that the matter would be taken care of by the common count, which is the second cause of action.

The Court: Call your first witness.

* * *

[Endorsed]: Filed September 8, 1954. [6]

PLAINTIFF'S EXHIBIT No. 1

August 1, 1951.

Sharples Corporation,
2300 West Moreland Street,
Philadelphia, Pennsylvania.

Att: Mr. Ted Armstrong,
Sales Department.

Gentlemen:

In accordance with our verbal understanding, please find enclosed our purchase order covering purchase of two Sharples PY-14 Cylindrical Super-D-Canters. These machines are to be fitted with vapor-sealed fittings, constructed of stainless steel, and the conveyors are to be treated with Hasteloy in order to harden the surface of the conveyors.

It is understood that the price of these machines will be $12,045 each, with an additional $1,500 al-

lowance for the hard surfacing of the feed zone impeller and conveyor.

It is understood that our final acceptance of these machines will be subject to results of full scale pilot plant tests to be conducted by the Sharples Corporation with material which we will supply. We are arranging in this regard to promptly forward to yourselves in Philadelphia, 200 gallons of solvent identical to a type being used in our plant here and 300 lbs. of lignite ground to a mesh size comparable with our plant practice. These we wish you to react under established temperature and stirring conditions. We will hold retaining samples of both solvent and lignite.

It is understood that dependent upon the outcome of these tests, we will place our final acceptance and confirmation of the enclosed purchase order. In regard to priorities we ask that you keep in contract with Mr. Joseph DeAngelis of the DeAngelis Coal Company, Box 338, Carbondale, Pennsylvania. We understand that there will be forthcoming an NPA delivery order to the Sharples Corporation specifying our priority.

I would like at this time to thank you and Mr. Tom Close for your co-operation and assistance in conducting preliminary tests at your plant in Philadelphia.

Yours very truly,

AMERICAN LIGNITE
PRODUCTS COMPANY,

/s/ R.M.R.

R. M. ROBERTS.

RMR/emg

Enclosure

cc: Sharples Corporation,
Att: Mr. Griffin,
686 Howard Street,
San Francisco, California.

Mr. Joseph DeAngelis,
P. O. Box 338,
Carbondale, Pennsylvania.

Received August 2, 1951.

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 2

September 28, 1951.

Air Mail.

American Lignite Products Company,
Ione, California.

Attention: Mr. F. J. DeAngelis.

Gentlemen:

Confirming our recent telephone conversation, we will not delay shipping your Super-D-Canters until we find a satisfactory material of which we can make gaskets and seals for these machines. The machines will be shipped to you with our standard

gaskets and seals which are made of a Buna compound. We are currently conducting tests here, inasmuch as we still have some solvent left after running your tests, to determine what material is best suited for your application. In the absence of any specific data, it appears that Teflon may prove to be the best material. Should this be true, the cost of Teflon seals over and above the cost of our standard seals must be passed on to you.

Since talking with you on the phone, it now appears that we may be able to get you one (1) Super-D-Canter somewhat sooner than we could get you two (2) together. As soon as I have something definite on this, I will advise you.

Incidentally, we are proceeding on the basis that your order is firm although we have not received an addendum to your original order so stating.

Will you please send us this addendum at your earliest convenience?

Very truly yours,

THE SHARPLES CORPORATION,
Sales Department.

cc: Mr. R. M. Roberts.

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 3

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

Air Mail.

October 9th, 1951.

Sharples Corporation,
2300 Westmoreland Street,
Philadelphia 40, Pa.

Attention: Mr. T. R. Armstrong.

Gentlemen:

We acknowledge your letter of September 28th, together with the enclosed reports outlining tests conducted with lignite supplied by ourselves and reacted with solvents as outlined in your report.

This letter will serve as confirmation of our order dated August 4th, 1951, for two Sharples Super-D-Canter Centrifuges.

Our confirmation of this order is based upon the performance results submitted to us, particularly the experiment work described under Test No. 1 of the above report. It is our understanding that these machines will duplicate the results quoted in this test under similar conditions.

Very truly yours,

AMERICAN LIGNITE
PRODUCTS CO.

/s/ R. M. ROBERTS.

RMR:hvw

cc: Mr. T. J. Griffin,
Sharples Corp., S. F.

[Stamped]: Sales Dept., Oct. 11, Rec'd.

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 4

Air Mail.

November 21, 1951.

Mr. F. J. DeAngelis,
American Lignite Products Company,
Ione, California.

Dear Mr. DeAngelis:

I have your letter of November 13th, concerning your order with us and I think a review of the circumstances surrounding this order is necessary so that we will have a common understanding of this problem which I think does not exist at the present time.

The chronology of the events which I have is as follows. On July 26th, we ran a test in our Laboratory on some small equipment and the results were

Plaintiff's Exhibit No. 4—(Continued)

satisfactory to Mr. Roberts who witnessed the tests and who wanted to place an order immediately for two larger machines with a guarantee on our part to equal the tests. This we could not do for obvious reasons. Our position being that before making a guarantee we would have to run a full scale test on the actual equipment which would be delivered to you. In the meantime, however, you gave us an order based upon the supposition that these full scale tests would bear out the laboratory tests referred to above.

We require a minimum of seven months to build Super-D-Canters with hard surfaced conveyors. Our discussion with your organization disclosed that such a length of time would work a hardship on you and, therefore, we decided to divert another order which we had in our Production Department for another customer over to your company and stated that by doing this we could make delivery in approximately four months.

Therefore, by giving you another customer's equipment by November 26th, we would be living up to our accelerated delivery date of four months.

You have now been advised that shipment will be made by November 30th, which is only a few days over the deadline. I have checked with our Production Department before writing this letter and they tell me that the first machine is scheduled for ship-

Plaintiff's Exhibit No. 4—(Continued)

ment on November 28th, and the second unit on December 14th.

At one time it appeared that we might move this delivery up to better than four months, in accordance with Mr. Armstrong's letter of November 2nd to Mr. Roberts. However, a mishap in our production made this impossible and on November 9th, Mr. Armstrong wrote you stating that we would have to revert to our original delivery date of four months which would be November 29th or 30th. As a matter of fact, that would make it four months and four days.

Your Mr. Connelly discussed this delivery problem with Mr. Costigan, Manager of our New York Office, on August 14th and Mr. Costigan told Mr. Connelly that we could not improve upon our original delivery promise.

On August 16th, Mr. Armstrong wrote to you and reiterated the original delivery date of four months.

On September 29th, Mr. Roberts telephoned Mr. Armstrong and at that time Mr. Armstrong advised him that the delivery date would be as originally scheduled—four months.

We then had a letter from you dated September 29th, asking us to improve upon this delivery and on October 4th, Mr. Armstrong wrote to Mr. Griffin, Manager of our San Francsico Office, asking him to go and personally discuss this delivery problem

Plaintiff's Exhibit No. 4—(Continued)

with you and acquaint you with our problem and tell you that our efforts to make a shorter delivery than four months were unsuccessful.

One other pertinent thing that should be mentioned is that while the original tests were run on July 26th, it was not until September 24th, that we ran the full scale tests which were successful and on which date we considered we had a bona fide order and could make the required performance guarantees.

We regret the misunderstanding as well as the expense which your company has been put to in operating without this equipment. However, machinery of this particular type takes a long time to build and while four months seems intolerable to you it really is unusual performance from a production standpoint.

In the event that your understanding of the details outlined in this letter vary from mine, I'd appreciate hearing from you. In the meantime this order will have my personal attention and if we can ship the first machine or the second machine any sooner than the present schedule of November 28th and December 14th, respectively, we will certainly do so.

My kind regards to you and I shall look forward with pleasure to meeting you soon when I am on the West Coast.

Plaintiff's Exhibit No. 4—(Continued)

Sincerely yours,

THE SHARPLES CORPORATION,

....., President.

G. J. KEADY
-fel-

cc: Mr. J. T. Costigan-New York.
Mr. P. T. Sharples-Phila.
Mr. T. J. Griffin-San Francisco.
Mr. C. E. Printz-Phila.

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 5

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

January 16th, 1952.

Mr. G. J. Keady, President,
Sharples Corporation,
2300 Westmoreland Street,
Philadelphia, Pa.

Dear Mr. Keady:

We returned your first billing invoice for one Sharples Super-D-Canter. This was returned as it

was requested by our auditor that the ESA stamp of approval appear on the face of the invoice. Considering that an unreasonable length of time has elapsed since we mailed this invoice back to your billing department, we are wondering if we stepped out of line in making this simple request. If in any way our request for the ESA stamp is objectionable, please inform us and we will act accordingly.

I know you are interested to hear about the two PY-14 Super-D-Canters. One has been installed since December 17th, 1951, and has been operating ever since. The other is being held in storage and will not be put to work until we can, in some way, operate the present one with efficiency. From everything which we have learned so far, it appears that centrifugation does not afford a better process when compared with filtration. The only favorable point is that we will have a larger capacity, but this doesn't help as the effluent contains insolubles which are so fine that it is virtually impossible to eliminate them by centrifugation or filtration. We have tried everything possible with no apparent success. We would appreciate any advice you might have to offer concerning the elimination of these very fine insolubles which are present in the effluent from the PY-14 Super-D-Canter.

From a great number of tests utilizing the super-centrifuges in conjunction with the effluent from the PY-14, we are convinced that the super-centrifuges will not give us the desired product. Every type of solution which we have passed through the super-

centrifuges resulted to a final extract of wax which is not saleable.

Much thanks for your personal interest.

Very truly yours,

AMERICAN LIGNITE
PRODUCTS CO.,

/s/ FRANK J. DeANGELIS.

FJDeAngelis:hvw

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 6

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

February 22nd, 1952.

Air Mail.

Mr. D. J. Keady, President,
Sharples Corporation,
2300 Westmoreland Street,
Philadelphia, Pa.

Dear Mr. Keady:

We wrote you on January 22nd requesting your comment on the two alternatives which we outlined in our letter. To date we have not heard from you

in this regard. However, it is just as well as we have now reached a more definite state of mind.

Since writing our letter of January 22nd, we have striven to put the Super-D-Canter PY-14 to some type of work which would be of benefit to us. Unfortunately, no matter which condition we tried, we were unable to obtain satisfactory results. We are at a complete loss to approach the situation any further and it appears necessary that we will have to return the one Super-D-Canter PY-14 which is still in its original crate and has been held in storage since the day we received it.

May we ask you therefore to give us your written permission to return it, as well as furnish shipping instructions. Shipment will leave here as you indicate, prepaid.

We are indeed regretful that your type of centrifuge cannot be successfully fitted to our process. As mentioned in past correspondence, there are certain advantages to centrifugation which would pay off appreciably and which we would like to retain. However, the finished product is so badly contaminated it is completely unmarketable.

Unless you can furnish us with competent engineering which will successfully adapt the PY-14, we would be reluctant to try any further experimental work on our own as we feel that we have attempted every possible condition without satisfactory results.

We would like to hear from you at your earliest convenience.

Very truly yours,

AMERICAN LIGNITE
PRODUCTS CO.

/s/ FRANK J. DeANGELIS.

FJDeAngelis:hvw

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 7

March 5, 1952.

Air Mail.

Mr. F. J. DeAngelis,
American Lignite Products Company,
Ione, California.

Subject: Sales Order M-7553.

Dear Mr. DeAngelis:

I have discussed your letter of February 22nd with Mr. Keady, and he has asked me to reply.

We will accept the return of the last Super-D-Canter which we shipped to you, if this machine has not been used, and at a cancellation charge of 25% of the price of the machine.

You purchased these two machines on the basis of full scale tests which were run, and which were satisfactory to you. I am quite sure that when

operating on material which is identical with that which you submitted for tests, that the Super-D-Canter will perform in exactly the same manner as indicated in the test report. As a consequence, we feel no responsibility for changes in your processes, or in your set-up which makes the results of this machine unsatisfactory to you at the present time.

Upon receipt of your firm order, we procceded to manufacture this unit, and we experienced irrecoverable costs. It is our expectation that you will reimburse us for these costs, and this is the basis of the cancellation charge of 25%. The charge of 25% is somewhat less than our normal charges in cases of this nature, and I assume that you will find it acceptable.

Very truly yours,

THE SHARPLES CORPORATION,

....., Vice President.

C. E. Printz
-meh-

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 8

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

March 14th, 1952.

Sharples Corporation,
2300 Westmoreland Avenue,
Philadelphia, Pa.

Attention: C. E. Printz.

Gentlemen:

In response to your letter of March 5th, we wish to advise that we will keep a direct answer in abeyance pending an exchange of correspondence between our respective offices.

You can expect to hear from us within a short time.

We wish to advise you that the performance of the PY-14 Super-D-Canter was directly contingent on the performance of the Super Centerfuge which was supposed to clarify the effluent from the PY-14 to the expected results shown in your Laboratory Report No. 86686, Part 2.

We have simulated this condition, as well as many other conditions, without ever obtaining results to approach what you have shown.

In any event, we will write you in detail as soon as possible.

Very truly yours,

AMERICAN LIGNITE PRODUCTS CO.,

/s/ FRANK J. DeANGELIS.

FJDeAngelis:hvw

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 9

April 7, 1952.

American Lignite Products Co.,
Division of DeAngelis Coal Co.,
Carbondale, Pennsylvania.

Gentlemen:

To date we have not received your check to offset our invoice 1151-1268 dated November 30, 1951, in the amount of $13,545.00. This invoice is now considerably past due our regular terms of net 30 days.

May we have your check by return mail to close out this past due account or may we hear from you as to why payment is being withheld.

Very truly yours,

THE SHARPLES CORPORATION,

A. SMALETZ,
Credit Manager.

PLAINTIFF'S EXHIBIT No. 10

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

April 14, 1952.

The Sharples Corporation,
2300 Westmoreland Street,
Philadelphia 40, Pennsylvania.

Attention: Mr. A. Smaletz.

Gentlemen:

Your letter of April 7 addressed to our Carbondale address has been sent directly to us for our attention.

By now you have probably received the return of the PY-14 Super-D-Canter. Perhaps this will answer your question as to why you have not received our check to offset the charges which you questioned in your letter.

As soon as you have processed a credit memorandum for the return of this equipment, kindly send this in duplicate to the above address in order that our records can be adjusted.

It is indicated in one of your recent letters that if we were to return this equipment we would have to pay a 25% service charge. We wish to advise you that we definitely will not accept this service

charge, as your equipment failed to perform as your laboratory guaranteed.

Yours very truly,

AMERICAN LIGNITE
PRODUCTS COMPANY,

/s/ FRANK J. DeANGELIS.

FJDeAngelis:ta

PLAINTIFF'S EXHIBIT No. 11

April 23rd, 1952.

Mr. F. J. DeAngelis,
American Lignite Products Company,
Ione, California.

Subject: Our Sales Order M-7553.

Dear Mr. DeAngelis:

I have your letter of April 14th which was addressed to Mr. Smaletz. In this letter you indicate a definite refusal to recognize what we consider to be a fair and just return charge.

Once again I want to point out that we proceeded to manufacture this unit upon the basis of an order received from you, and we experienced costs which are irrecoverable. There is no indication, nor have you given us any definite data which would support your statement that this equipment failed to perform satisfactorily. In the first place, our labora-

tory guaranteed nothing except to duplicate the performance obtained here in the laboratory when operating on the same material. Since this machine is a duplicate of the laboratory machine, there is just no doubt in my mind that it will produce the same performance.

An invoice will be issued for a cancellation charge, in the amount of 25%, and we will expect you to honor this invoice.

Very truly yours,

THE SHARPLES
CORPORATION,

....,
Vice President.

C. E. Printz
-meh-

c.c. Mr. A. Smaletz

[Endorsed]: Filed April 30, 1953.

PLAINTIFF'S EXHIBIT No. 12

American Lignite Products Company
Division
DeAngelis Coal Co.
Carbondale, Pa.
Ione, California

December 12, 1951.

Mr. G. J. Keady, Pres.
Sharples Corporation,
2300 Westmoreland St.,
Philadelphia 40, Pa.

Dear Mr. Keady:

The facts contained in your letter of November 21st are mainly correct. There are a couple of points open to question, however, but rather than debate the pros and cons, let's simply drop the matter.

We are pleased to inform you that shipment of the first centrifuge was received on Monday, December 10th, exactly on schedule. Installation is nearly completed and it will only be a matter of a few days more till we are able to start first run tests. Of course your San Francisco engineer will be here to witness the first trial runs.

We wish to take this opportunity to thank you for your fine cooperation in supplying this equipment for us. We realize what you are up against in trying to meet customer's demands and there is no

doubt you have many pressing problems. Speaking for ourselves, frankly we are quite pleased over everything.

As indicated in your closing paragraph, I, too, shall look forward with pleasure to meeting you when you visit our area, and I wish to express our appreciation for your personal interest in our order.

Very truly yours,

AMERICAN LIGNITE
PRODUCTS CO.,

/s/ FRANK J. DeANGELIS.

FJDeAngelis:hvw

[Endorsed]: Filed April 30, 1953.

DEFENDANT'S EXHIBIT D

[Postcard]

[Front]

[Cancelled 2 cent stamp.]

[Postmarked]: Philadelphia, Pa., Apr. 17, 1952, 8:00 p.m.

[Addressed to]: American Lignite Products,
Ione, Calif.

[Back]

The Sharples Corporation
2300 Westmoreland Street
Philadelphia 40, Pa.

This is to acknowledge receipt of 1 PY-14-1387 complete with spares and tools from you on 4-16-52.

This equipment will be inspected and

☐ An estimate of repair costs and delivery will be forwarded for your approval.

☒ A credit will be issued to your account.

☐ We will repair and return to you per your instructions.

☐ Please advise reason for material return.

Our repair order No. R-981. Your order No. ....

W. F. CAMPBELL,
Manager Service & Repair Department.

[Endorsed]: Filed April 30, 1953.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated.

Complaint.
Answer and Counterclaim.
Reply to Counterclaim.
Findings of Fact and Conclusions of Law.
Judgment.
Notice of Appeal.
Cost Bond on Appeal.
Points Upon Which Appellants Intend to Rely Upon Appeal.
Designation of Portions of the Record.
Order Extending Time to Docket Appeal.
Plaintiff's Exhibits 5, 6, 7, 8, 9, 10, 11.
Defendants' Exhibit D.

In Witness Whereof I have hereunto set my hand and the seal of said Court this 21st day of April, 1954.

C. W. CALBREATH,
Clerk.

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below are the originals filed in this Court in the above-entitled case and that they constitute the Supplemental Record on Appeal as designated by the parties.

Plaintiff's Exhibits 1, 2, 3, 4 and 12.

Defendants' Exhibits A, B and C.

One (1) Volume Reporter's Transcript.

Designation of Additional Portions of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 8th day of September, 1954.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 14324. United States Court of Appeals for the Ninth Circuit. DeAngelis Coal Company, a Co-Partnership; American Lignite Products Co., a Co-Partnership; Nazzareno DeAngelis, Vincenzo DeAngelis, Mary DeAngelis, Joseph DeAngelis, Frank DeAngelis, Individually and as Co-Partners, Doing Business Under the Name of American Lignite Products Co., Appellants, vs. The Sharples Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed April 22, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,324

DeANGELIS COAL COMPANY, et al.,

Appellants,

vs.

THE SHARPLES CORPORATION,

Appellee.

STATEMENT OF APPELLANT ADOPTING THE STATEMENT AND DESIGNATION APPEARING IN THE TYPEWRITTEN RECORD

Pursuant to Rule 17 (6) of the Rules of Practice of the above-entitled Court, Appellant hereby adopts for purposes of this Appeal its designation of the record and statement of points upon which Appellants intend to rely upon this Appeal as appears in the typewritten record docketed from the District Court of the United States, Northern District of California, Northern Division.

/s/ PIERCE DEASY,
Attorney for Appellants.

[Endorsed]: Filed May 1, 1954.